IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12958 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDOTRA DUDH UTPADAK SAHAKARI MANDALI LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12958 of 2003

MR PK JANI for Petitioner No. 1

Mr.Joshi, AGP for Respondent No. 1-3

MR KS JHAVERI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 03/11/2003

ORAL JUDGEMENT

On 5/9/03 this court had passed the following order:

"Notice returnable on 16.9.03. Mr.Waghela waives service of notice on behalf of respondent No.4. DS to respondent Nos 1,2 & 3 is permitted.

By way of ad interim order, it is directed that the statusquo as existing today shall be maintained which would include that no new member shall be admitted by the respondent No.4 and the respondent No.4 shall not create any financial burden for its affairs and only routine activities will continue subject to further orders of this court."

2. Today, matter is taken up for final hearing. Rule. Heard Mr.Jani for the petitioner and Mr.Zaveri for respondent No.4 and Mr.Joshi, Ld.AGP for Government authorities.

3. The short facts of the case appear to be that the petitioner is a primarylevel Dudh Utpadak Sahakari Mandali in the village Nandotra having population of 3,182. It is the case of the petitioner that it had, in all, 365 members. It appears that there was dispute between certain members of the petitioner society and there was also resolution passed by the petitioner society for expelling certain persons as members, but the said resolution was ultimately not approved by the District Registrar. Pending the aforesaid, it appears that the said group of persons against whom resolution for expulsion was passed moved proposal to the District Registrar for formation of new milk producers' cooperative society, namely, Arbudanagar (Nandotra) Milk Producers' Coop.Society Ltd. The petitioner had filed objections intimating the District Registrar that the formation of respondent No.4-society shall adversely affect the existing society.The District Registrar considered the matter and as per the decision dated 24.4.03 the registration was refused. The promoters of the respondent No.4 preferred appeal being Appeal No.88/03 before the Addl.Registrar (Appeals) against the decision of the District Registrar and the Addl.Registrar (Appeals) after perusing the record found that the present respondent No.4-society is situated at a distance of about 100 Mtrs and it also found that the districtlevel union has declined to give any recommendation for registration of the respondent No.4 society . He also found that if the respondent No.4 society is registered it will create not only number of

complications but the existing society has invested huge amount of Rs.17 lacs and if the registration is granted it will adversely affect the existing society and therefore ultimately the appeal was dismissed. The respondent No.4 carried the matter before the State Government and the State Government found that since the minimum eligibility criteria is satisfied and as the proposed society is likely to have financial soundness, the revision was allowed by setting aside the order of the Additional Registrar (Appeals) and directed the Dist.Registrar to register the society. It has been submitted by Mr.Zaveri during the course of hearing that thereafter in August, 2003 the registration has been granted by the District Registrar pursuant to the order of the State Government and on 5.9.03 this court had passed the order issuing notice and after hearing it was ordered that the statusquo shall be maintained to the effect that no new member shall be admitted. However, the case of the respondent No.4 is that prior to the order dated 5.9.03 passed by this court 80 members are already admitted. The aforesaid order of the State Govt in revision is under challenge in the present petition.

4. It is admitted position that the petitioner was not impleaded as party either before the Additional Registrar (Appeals) or before the State Government in revision. The petitioner society, which is an existing society, had filed objections before the Dist.Registrar. There is also no dispute on the point that the population of the village Nandotra is 3,182. The perusal of the order passed by the State Government shows that the order has been passed without giving any opportunity of hearing to the petitioner-society. It may not be that in every case the existing society is required to be impleaded as party. However, in view of peculiar circumstances brought from the record in as much as when the Additional Registrar (Appeals) upon the record found that the existing society is likely to be adversely affected if the respondent No.4-society is registered, in all fairness, it was required for the respondent No.4 to implead the petitioner as party or in any case the State Government while exercising revisional jurisdiction ought to have directed the respondent No.4 society who was a revisionist before the State Government to implead the petitioner herein as party in the proceedings and in any case the order for registration could not have been passed by the State Government without giving opportunity of hearing to the existing society which was directly affected by the outcome of the decision and therefore the aforesaid is one of the material irregularities which has been committed by the State Govt while exercising

revisional jurisdiction.

5. However, Mr.Zaveri appearing for the respondent No.4 voiced grievance that the members of the respondent No.4-society who are about 80 in number had a dispute with the aforesaid group of petitioner society who are having majority. It has also been submitted by Mr.Zaveri that the milk after recording proper and correct contents of fat was not accepted and dispute went on to the extent of expelling the present group of 80 persons who are enrolled as members in the respondent No.4 society. Mr.Zaveri also submitted that as such after the expulsion of these members by the petitioner society the loan is taken by petitioner-society and therefore if such subsequent transaction is entered into by the petitioner society it has no bearing so far as the adverse affect is concerned. Mr.Zaveri also during the course of hearing produced the audited extract of books of accounts of petitioner-society for the years 2001-02 and 2002-03 and in the submission of Mr.Zaveri the profit without these 80 members has gone by Rs.10,000/- and therefore Mr.Zaveri submitted that the same goes to show that there will not be any adverse affect on the existing society. Mr.Zaveri also submitted that the requirement of financial soundness is demonstrated in as much as the minimum requirement is of capacity to supply 100 Ltrs of milk as against the same as recorded by the State Govt in the order, the respondent is supplying 700 Ltrs of milk everyday. He also submitted that it is question of survival of 68 families and therefore if the registration is already granted this court may not interfere with the order passed by the State Government. Mr.Zaveri also submitted that as such even if this court finds that the State Govt has not considered all the aspects, the matter may be remanded for reconsideration. However, he submitted that the statusquo as existing today may be maintained and the order of the State Govt directing for registration may not be set aside by this court.

6. Mr.Jani for the petitioner submitted, interalia, that there is some dispute, but leaving aside the same, the petitioner society is ready to admit and continue all the members of the respondent No.4 society and he is also ready to give assurance to this court that whatever milk is supplied shall be accepted by recording proper and correct fat and no discriminatory treatment whatsoever shall be given by the office bearers of the petitioner-society to the members of the respondent No.4 society who shall be reinducted. Mr.Jani also submitted that since it is a small village the functioning of the respondent No.4-society will have direct bearing and

adverse affect because the total number of members is 365 out of which even if 80 are excluded and they form new society it will have adverse affect on the functioning of the petitioner society. Mr.Jani during the course of hearing also shown willingness on behalf of the petitioner society to abide by any direction of this court protecting the interests of the persons who are at present members of respondent No.4-society.

7. Therefore, in view of the above, what is further required to be considered is the adverse affect and the requirement to form a new society. Merely because there are two groups or one group is having minority and there is some dispute with the other group of majority can not be said to be sufficient circumstances for formation of new society. If there are disputes amongst the members it would be for the members concerned to resort to remedy available under law. At the same time, those who are in majority must see to it that no illtreatment or discriminatory treatment is given to another group which is in minority but such existence of dispute can not be said to be the only yardstick for directing the registration of the society. Right to form an association is a right guaranteed under Article 19(1)(c) of the Constitution subject to restriction. The said restrictions are regulated by the provisions of Gujarat Cooperative Societies Act, 1962 (hereinafter referred to as "the Act"). Section 4 of the Act, interalia, provides for registration. However, the provisio reads as under:

> "Provided that it shall not be registered, if in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse affect upon any other society, or it is opposed to, or its working is likely to be in contravention of public policy."

8. The Govt has formed the policy as per circular, dated 8.9.89 and 7.11.1989 by way of guidelines. Further, the Government has also issued circular dated 18-21/7/03 as guidelines for the purpose of granting registration. As per the said circular, it has been, interalia, provided that as far as possible no other cooperative society should be granted registration in the same village, more particularly, in respect of Seva Sahakari Mandalis, Samudayak Kheti(Joint Agriculture) Society, Milk Coop.Society etc. There are disputes between some of the members of the petitioner as well as of respondent No.4 in the same village and it appears that the village is a small village where the population

is only 3,182. The Addl.Registrar (Appeals), after considering the matter, had found four important aspects, viz, (i) the Dist.level union did not recommend for registration, (ii) the proposed society is situated at a distance of about 100 Mtrs, (iii) the existence of dispute amongst the members can not be a only ground for formation of new society, (iv) the existing society has made huge investment of about Rs.17 lacs for modernisation and for establishing cold centre and therefore it will have adverse affect. The perusal of the order passed by the State Govt shows that the State Govt has not at all recorded any any extraordinary or exceptional circumstances for making departure from normal policy or guidelines for granting registration. Not only that, but there is no reference to the aforesaid circulars/policy/guidelines for registration issued in July, 2003. It appears that while considering the matter the State Govt has misdirected itself on the question of minimum eligibility criteria. The minimum eligibility criteria can not be treated as a valid ground for making departure from the normal principles that one society at one village. If it is a village comprising of more population normally exceeding 10,000, the matter would have been different because there are instructions/guidelines issued for such purpose by the authority. Here, it has come on record that it was a small village having population of 3182 persons. Therefore, the minimum criteria provides for functioning of a society can not be treated as a ground for making departure from the normal policy or guidelines of the State Govt. Further, the State Govt has not independently examined the material on the question of adverse affect which was found by the Additional Registrar (Appeals) in the decision in appeal. The aspect which is considered by the State Govt is that even if the District union has not recommended for registration after taking assurance from the society registration can be granted. The main issue which was required to be examined by the State Govt was to ascertain whether the registration to respondent No.4 society will have adverse affect on the functioning of the petitioner society or not, more particularly, when the appellate authority in appeal had examined and had found that it will have adverse affect on the functioning of the petitioner society. Even otherwise also if the record of the present case is examined it primafacie appears that when it is a small village having population of 3182 persons and the society in all is having 365 members and if such 80 persons are excluded who are supplying milk of about 700 Ltrs per day it can reasonably be concluded that the functioning of such new

society with such 80 persons will have adversely affect on the functioning of the petitioner society, more particularly, when it has already made huge investment of about Rs.17 lacs towards modernisation and for establishing cold centre etc.

9. Merely, because there is additional profit of Rs.10,000/- by the petitioner society in my view it can not be concluded that the registration of respondent No.4-society will not have any adverse affect. The adverse affect may be of various types including that of unfair competition. In the present case, as observed earlier, the petitioner society has made huge investment of about Rs.17 lacs, not only that but if out of 365 suppliers of milk 80 are excluded it will have direct bearing on the functioning of the turnover of the petitioner-society. Moreover, in a small village like Nandotra having population of 3186 normally if one society is maintained, it would create not only harmonious atmosphere but would also promote the economic interest of other members and the village.

10. However, at the same time, the existing members of the respondent No.4 society can not be put to peril on account of either registration granted and or continued for some time or on account of any alleged dispute with office bearers of the petitioner society. Since Mr.Jani, during the course of hearing, has fairly agreed to abide by the directions which may be given by this court for such purpose, I find it proper to leave the matter at that stage without observing anything further.

11. In view of the aforesaid observations and discussion, the petition succeeds and the order passed by the State Govt, dated 8.8.03 is quashed and set aside with a direction that the State Govt shall consider the matter afresh keeping in view the aforesaid observations of this court and shall decide the revision application afresh as early as possible preferably within a period of three months from the date of receipt of writ of this court.

12. The aforesaid direction shall be on condition that the petitioner-society shall:

(i) admit all the members of the respondent No.4 society as its members, if such request or application is made by the persons concerned.

(ii) accept the milk in accordance with law and shall

not make any discrimination whatsoever amongst the members on the ground that they are staying in Arbudanagar or that they were members of respondent No.4 society or any other ground not valid in law.

It is clarified that as a consequence of the present direction, the registration granted by the District Registrar pursuant to the order of the State Govt shall also stand quashed and set aside.

13. Rule is made absolute accordingly to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

DS permitted.

3.11.2003 (JAYANT PATEL,J)